

1. The disclosure is objected to because of the following informalities: On page 3, last paragraph, the word “sheaf” should be sheath.

Appropriate correction is required.

2. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, line 4, the word “sheaf” should be sheath.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1 and 20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17 and 19 of U.S. Patent No. 6,782,790 (Barrett) in view of Palmer (421).

5. Claims 17 and 19 of Barrett claim all of applicant's claimed invention except for a specific projectile velocity of 300 m/sec to 1500 m/sec.. Palmer (421) teaches a projectile

velocity of 300m/sec to 1500 m/sec. (col. 10, lines 42-44). Applicant is selecting a particular projectile operation velocity for the projectile velocity already claimed in Barrett and putting it to use in an analogous art setting with expected or predictable results. It would have been obvious to apply the teachings of Palmer to the Barrett claim language and have a method of deflecting with projectiles of a particular speed.

6. Claims 1 and 21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 18 of U.S. Patent No. 6,782,790 (Barrett) in view of Roth (857).

7. Claim 18 of Barret claims all of applicant's claimed invention except for a specific wavelength of .35 microns to .70 microns for the absorbed electro-magnetic radiation. Roth (857) teaches a specific absorbed electro-magnetic radiation of wavelengths of .35 microns to .70 microns. Applicant is selecting a particular absorbing wavelength and putting it to use in an analogous art setting with expected or predictable results. It would have been obvious to apply the teachings of Roth to the Barrett claim language and have a method of deflecting using electro-magnetic radiation of a particular wavelength.

8. Claims 1-10, 12-17, and 21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,782,790 (Barrett) in view of Roth (857) and Palmer (421).

9. Claims 1-20 of Barrett claim all of applicant's claimed invention except for a specific wavelength of .35 microns to .70 microns for the absorbed electro-magnetic radiation and projectile velocity. Roth (857) teaches a specific absorbed electro-magnetic radiation of wavelengths of .35 microns to .70 microns. Applicant is selecting a particular absorbing

wavelength and putting it to use in an analogous art setting with expected or predictable results. Palmer (421) teaches a projectile velocity of 300m/sec to 1500 m/sec. (col. 10, lines 42-44). Applicant is selecting a particular projectile operation velocity for the projectile velocity already claimed in Barrett and putting it to use in an analogous art setting with expected or predictable results. It would have been obvious to apply the teachings of Roth to the Barrett claim language and have a method of deflecting using electro-magnetic radiation of a particular wavelength and particular projectile speed.

10. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

11. Claim 20 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 18 of prior U.S. Patent No. 6,782,790 (Barrett). This is a double patenting rejection.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 703-306-4158.

The examiner can normally be reached on Tuesday through Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4177.

Art Unit: 3641

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9326. The fax phone number for after final communications is (703) 872-9327.

/Stephen M. Johnson/
Primary Examiner, Art Unit 3641

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ
January 23, 2008